of the whole course of dealing between him and the Bank, I do not think that it would for one moment have crossed his mind that the Bank were asking for settlement of his debit balance.

All that is asked for in the present case is a declaration as to the amount due and payable by the respondent as administrator of the Customer's estate to the Bank and there will accordingly be a declaration that there is due and payable an amount of $9,150 with interest at the rate of 8.4% per annum from 1st October, 1949. The applicant will have his taxed costs in these proceedings.

Application allowed.

CHE YUSOF BIN ISMAIL v. TAY KAY CHUA.

[App. Civ. Juris. (Thomson, J.) May 21, 1952]

[Ipoh — Civil Appeal No. 19 of 1951]

Landlord and tenant — Rent Restriction — Rent — Total of rent and rates paid by tenant — Agreement to pay rates to landlord — Control of Rent Ordinance, 1948, s. 13(1)(j).

In this case the appellant was the tenant and the respondent was the landlord of premises known as No. 38 Ah Cheong Street, Teluk Anson. The terms of tenancy, which it was admitted had been lawfully terminated by notice to quit, were that the tenant should pay to the landlord rent at the rate of $81.25 per month together with the amount of the Town Board assessment payable by the landlord which was payable half yearly but was at the rate of $13.08 a month. Some time prior to the commencement of the suit the tenant had sublet portions of the premises to three sub-tenants at rents amounting in the total to $125/- a month but retained a portion of the premises for his own occupation. At all material times these three sub-tenants and the tenant were in occupation of different parts of the premises. The landlord asked for possession of the premises as against the tenant and ancillary relief, and the only question that arose was whether the case fell within section 13(1)(j) of the Control of Rent Ordinance, 1948.

Held, that as the tenant was receiving from the sub-tenants about 92% of the amount paid by him to the landlord including the amount of the Town Board assessment the case fell within section 13(1)(j) of the Control of Rent Ordinance.

CIVIL APPEAL from the Sessions Court, Teluk Anson.

S. M. Sharma for the appellant.

D. G. Ironside for the respondent.

Cur. Adv. Vult.

Thomson, J. : — This is an appeal from the Sessions Court, Teluk Anson. I reserved judgment because at the time of the hearing of the appeal I thought it might be necessary to express views on certain matters which might be of assistance to lower courts, and I therefore felt I should choose my words with some care. On reflection, however, I have come to the conclusion that to follow such a course would be to go further than is necessary to dispose of the appeal.

The appellant was the tenant and the respondent is the landlord of premises known as No. 38 Ah Cheong Street, Teluk Anson. The terms of the tenancy, which it is admitted has been lawfully terminated by notice to quit, were that the tenant should pay to the landlord rent at the rate of $81.25 per month together with the amount of the Town Board assessment payable by the Lordlord which was payable half yearly but was at the rate of $13.08 a month. Some time prior to the commencement of the present proceedings the tenant had sub-let portions of the premises to three sub-tenants at rents amounting in the total to $125 a month but retained a portion of the premises for his own occupation. At all material times these three sub-tenants and the tenant were in occupation of different parts of the premises.

The landlord asked for possession of the premises as against the tenant and ancillary relief, and the only question that arose was whether the case fell within section 13(1)(j) of the Control of Rent Ordinance, 1948, which reads as follows :—

"13. (1) No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the following cases, namely —

.....

(j) where the tenant having sub-let the premises or part thereof, receives, in respect of such sub-letting, rents (exclusive of any payment by the tenant for Municipal or Town Board services) which exceed in the aggregate seventy-five per cent. of the rent paid by the tenant."

In the event, the President of the Sessions Court decided the question in favour of the landlord and gave judgment in his favour as prayed subject to the usual saving in favour of the sub-tenants.

Against that decision the tenant has now appealed.

I do not propose to deal at length with the grounds of appeal because, quite frankly, I fail to see the relevance of many of them to the case before me.

The rent payable by the tenant to the landlord was $81.25 per month or, if the amount payable in respect of the Town Board assessment be added, $94.33 per month. For the sake of argument I shall assume the latter figure which is the figure of the two more favourable to the appellant.

The amount paid by the sub-tenants to the tenant was $125 per month. From that sum of $125 per month fall to be deducted for the purposes of section 13(1)(j) "any payment by the tenant for Municipal

or Town Board services". Putting aside for the moment the question of the Town Board assessment, which by reason of section 32 of the Sanitary Boards Enactment (Cap. 137) is payable by the owner of the premises, the only charges paid by the tenant in respect of any services were water and light charges amounting to $52.40 per month. I do not think it is necessary for the purposes of the present proceedings to decide whether or not these payments are "Municipal or Town Board services" within the meaning of the Ordinance for even if they were for the purposes of section 13(1)(j) only so much of these payments by the tenant as was in respect of the portion of the premises sub-let by him to the sub-tenants is admissible as a deduction for the purpose of determining the percentage of the rent paid by the tenant which was constituted by the rents paid by the sub-tenants. I think that is crystal clear from the wording of the section itself. It says "where the tenant, having sub-let the premises or part thereof, receives, in respect of such sub-letting, rents" then follow the words which as if to emphasize that they qualify the word 'rent' are contained in brackets "(exclusive of any payment by the tenant for .... services)". The words "in respect of such sub-letting" if they have any meaning at all clearly govern everything that follows them, that is to say, the word rent as qualified by the words in brackets.

Having arrived at that stage, the question then arises what proportion of the amount paid by the tenant for services was in respect of the portion of the premises sub-let. The learned President dealt with the question thus. He observed that the upstairs flat was sub-let at $35 a month, that the back portion of the ground floor was sub-let at $40 a month, that half of the front portion of the ground floor was sub-let at $50 per month and that the other half of the front portion of the ground floor was occupied by the tenant himself. On these figures he formed the the conclusion that in value at any rate the portion of the premises occupied by the tenant amounted to 2/7th of the whole. On this basis he thought that 5/7th of the payments for services should be attributed to the portion of the premises comprised in the various sub-lettings and 2/7th should be attributed to the portion occupied by the tenant. In the absence of any evidence to assist him other than the evidence as to that in respect of the rents, I do not see how he could have proceeded in any other way and I accept the proportion at which he arrived which indeed as such has not been in any way attacked. It follows that there should be deducted from the amount rent paid by the sub-tenants a sum of $37.43 leaving a net amount of $87.57 which on my calculation is about 92 per cent. of the amount paid by the tenant to the landlord including the amount of the Town Board assessment.

I do not find it necessary to consider whether a proportionate amount of the Town Board assessment should be included in the amount to be deducted from the rents paid by the sub-tenants for even if it were so included, it would only reduce the percentage to 83 per cent.

The appeal is dismissed with costs.

[Note: — The above Judgment was prepared before the report of **Sidney Trading Co., Ltd. v. Finsbury Corp.** (1952) 1 T.L.R. 512; (1952) 1 All E.R. 460; 96 Sol. J. 182 was available locally. It is not thought, however, that it contains anything inconsistent with the Judgment of the Divisional Court in that case.]

Appeal dismissed.